IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 27896 of 1998

Between
The Secretary to Government,
Industries & Commerce (PE Cell) Department, Secretariat,
Hyderabad.

..... PETITIONER

AND

1 The Industrial Tribunal-II,
2nd Floor, Eastern Wing, Chandravihar Building,
M.J.Road, Nampally, Hyderabad.
2 Hyderabad Allwyn Workers Union, Rep by General Secretary,
Casual & Badili Workers Union,
Sangareddy, Medak Dist.
3 The Management of Hyderabad Allwyn Ltd.,
Sangareddy, Medak dist.
4 The Addl. Secy. to Government
Labour, Employment, Training & Factories (Lab.I) Department.,
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of a writ of Certiorari and call for records relating to connected with Award dated 17-5-97 which was rendered in ID.No.224/94 on the file of the 1st respondent and the consequential proceedings issued in GD Rt.No.1810, L.E.T.& F Department,
dated 28-6-97 which was issued by the 4th respondent and quash or set aside the same as void illegal.

Counsel for the Petitioner: THE ADVOCATE GENERAL
Counsel for Respondents 1&4 : Govt.Pleader for Labour
Counsel for the Respondent No.2: Mr. V.Narasimha Goud

Counsel for Respondent No.3 : None appeared

The Court made the following :

O R D E R:

This Writ Petition is filed seeking a Writ of Certiorari to quash the Award dated 17-5-1997 in I.D.No.224 of 1994 on the file of the Industrial Tribunal-II, Hyderabad, wherein the members of the 2nd respondent-Union were declared to be entitled for a *lump sum* compensation i.e. Rs.18,000/- each, to meet the ends of justice and the consequential proceedings in G.O.Rt.No.1810, dated 28-6-1997 as being void and illegal.

The 2nd respondent-Union raised conciliation proceedings before the appropriate authority. As the conciliation failed, the matter was referred to the Government. The Government, after considering the matter, referred it under Section 10(1)(c) of the Industrial Disputes Act,1947 (for short 'the Act') to the Industrial Tribunal-II, Hyderabad for adjudication of the following issue:

> "Whether the Management of Hyderabad Allwyn Ltd., Sangareddy is justified in terminating the following workmen from service even after completion of 240 days attendance"
>
> 1. Sri G.Anjaneyulu
> 2. Sri C.Balanarasimulu
> 3. Sri S.Buchaiah
> 4. Sri T.Chandrasekhar
> 5. Sri N. Krishna
> 6. Sri Khalidas
> 7. Sri S.Krishna
> 8. Sri Mohd. Sharfuddin
> 9. Sri Mohd. Izaj Ali
> 10. Sri Mohd. Shafi
> 11. Sri Mohd. Karim
> 12. Sri K. Madhu
> 13. Sri G.Nagesh
> 14. Sri N.Nagabhushanam
> 15. Sri K. Nimrod
> 16. Sri S. Ramulu
> 17. Sri D. Ramulu
> 18. Sri Ch.Rajbabu

19. Sri V. Shankaraiah
20. Sri C.Sayanna
21. Sri K. Subbareddy.
22. Sri B. Srisailam
23. Sri V. Srisailam
24. Sri P. Suryakanth
25. Sri A. Venkatesham
26. Sri B. Vithal
27. Sri E. Vigneswar
28. Sri C. Venkatesham
29. Sri J. Yadagiri
30. Sri N. Yadagiri

If not, to what relief ?"

A claim statement was filed by the 2nd respondent asserting that 30 workmen were employed by the Hyderabad Allwyn Ltd., Sangareddy, Medak district as Technical Welders, Helpers, Grinders etc., on daily wage basis. No weekly-off was given for seventh day with wages. They continuously worked from the date of their joining service without any interruption or break in service. They have joined on various dates between 1983 and 1986. While they were in service, the Union had submitted a representation to the management on 12-11-1988 requesting to regularize the services of all the workmen, who had completed 240 days of service. In view of this, the management, to deprive the benefit of regularization of the workmen, terminated their services on 16-11-1988. The workmen were not given any notice nor paid any retrenchment compensation nor assigned any valid reasons for terminating their services. Therefore, the termination of their services was illegal, since it amounts to retrenchment within the meaning Section 2(oo) of the Act and is violative of Sections 25-F,G and N of the Act.

The Management had filed a detailed rejoinder stating that the workmen, whose names are mentioned, were casual and temporary. They were engaged depending on the availability of work. The management is not aware whether the said 30 workmen are the members of the Union. The Badli workers are paid depending on the

availability of work and they cannot claim regular appointment. They used to come to the factory gate and work was provided when it was available. On 15-11-1988, the management found that there was no work for all the casual workers. But, 15 Badli workers were not taken to duty and others were asked to work. Instead of joining duty, they demanded that all of them have to be taken for duty. They should be redesignated as casual workmen and should be provided with punch cards, apart from recognizing their union. They had gone on indefinite strike on 16-11-1988; thus they refused to work. There was some unrest and also threat to the property of the management. The police assistance had to be taken to protect the plant and personnel. However, at the instance of the Assistant Commissioner of Labour, a seniority list was drawn up to avoid any agitation. The management also prepared a seniority list and put up on the notice board on 18-11-1988 and advised them to join duty on or before 19-11-1988. They refused to join duty; therefore, they cannot term the management's action as violative of Section 25-F, G, H and N of the Act. Actually, there were surplus labour and 300 workmen had to be adjusted. In the meanwhile, the Government had taken over M/s.Hyderabad Allwyn unit under G.O.Rt.No.384, dated 31-3-1984 under which Voltas Limited retained 5,000 employees and for 1486 employees they were making suitable arrangement by Government of Andhra Pradesh. Government employed under Ex.W3 1486 employees and appointed a Chief Executive for Auto & Watch Division. Under Exs.W5 and W6 separate companies were formed by the Government and incorporated under the Companies Act. Thus, M/s.Hyderabad Allwyn Ltd. became non-existent under the Companies Act. Therefore, the State Government, which stepped into the shoes of Hyderabad Allwyn Ltd. was sought to be impleaded by filing I.A.No.63 of 1995.

Before the Industrial Tribunal, on behalf of the workmen, two

witnesses were examined and three documents were marked and for the management one witness was examined and ten documents were marked. After going through the entire evidence on record, the Tribunal noticed that during the pendency of the case, 2 IAs were filed i.e. I.A.Nos.56 and 63 of 1995. I.A.No.56 of 1995 was filed to make the Management of M/s.Allwyn and unit of Voltas Limited as a party. But, the Tribunal dismissed the said application in view of the documents filed therein showing that the Government took the responsibility under Ex.M4, wherein it was stated that special unit will be created and that list of cases was also mentioned, wherein all 31 cases and this case was also referred as I.D.No.63 of 1990, which was renumbered as I.D.224 of 1994. Thereafter, I.A.No.63 of 1995 was filed to make the Principal Secretary to Government of Andhra Pradesh as a party. The Tribunal allowed the said I.A.

Coming to the main question, the Tribunal proceeded to hold that in Ex.W1 letter of the Conciliation Officer, it was specifically stated that the union submitted a list, then the Management verified the same with their record and in the meeting held on 19-4-1989 it was stated that out of 114 workmen only 30 had completed 240 days of attendance. However, no attendance register was marked, since there was a categorical admission by the management that these workmen had completed 240 working days during the conciliation proceedings. Now, they cannot turn round and say that they had not completed 240 days. Therefore, the management as per Section 25-N of the Act should have given three months notice in writing indicating the reasons for retrenchment, or all the workmen should have been paid wages for the period in lieu of such notice and prior permission of the appropriate Government should have been obtained. Admittedly, such a procedure was not adopted by the management. It was further held:

> "Therefore, I am of the opinion that if each worker is given a lumpsum compensation, it will meet the ends of justice. It may be seen that most of the workers have joined in 1984, 1985, 1986 and 1987 and a very few in 1983. So

hardly they have put in 5 years of service, hence I hold that all the petitioners including P.No.8 and 12 and L.Rs. of petitioner No.17 are entitled to a compensation of Rs.18,000/- each in lumpsum, which comes to about 3 years wages as it was then and which shall be paid by the respondent No.2 within 30 days from the date of publication of the Award failing which it shall carry an interest @ 12% per annum."

Now the writ petition is filed by the petitioner-Government, which had taken over the unit under an Understanding reached between the parties and under Ex.M4 it was specifically stated that with regard to 31 cases including the present one, it would be responsibility of the Government. Thus, the Government had stepped into the shoes of the earlier management. Having taken over the Undertaking and also having taken the responsibility under Ex.M4, the petitioner cannot approach this Court and say that they have no responsibility for the acts committed by M/s.Hyderabad Allwyn Ltd., Sangareddy before it was taken over by them. Insofar as completion of 240 days and the status of the employees was concerned, the Management of Hyderabad Allwyn Ltd itself had given up before the Tribunal and it was also noticed by the Tribunal that during the pendency of the conciliation proceedings before the Assistant Commissioner of Labour, the management had conceded that these workmen had put in more than 240 days continuous service preceding the date of their termination. Therefore, there is no necessity to go into this aspect again in this proceeding. Even otherwise, on the facts apprised before the Tribunal and the conclusions reached therein as to completion of 240 days, the petitioner cannot get over the same. Admittedly, the management had engaged more than 300 workmen; therefore, rightly the Tribunal came to the conclusion that neither any retrenchment notice as required under Section 25-N of the Act nor in lieu of that, notice pay as required therein was paid to the workmen. Further, no retrenchment compensation was paid nor the provisions of Section 25-G or H were followed. I am of the considered opinion that the Tribunal passed a well reasoned Award, which does not call for

interference at the hands of this Court. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

September,2004

Prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Industrial Tribunal-II,
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Secretariat, Hyderabad.

5. 2 CCs to Advocate General, High Court Buildings, Hyderabad (OUT).

6. 2 CCs to Govt.Pleader for Labour, High Court Buildings, Hyderabad (OUT)

7. 2CD copies.